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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 **IGNACIO PENA,**

Petitioner,

16
17 v.

18 **D.K. SISTO, Warden,**

19 Respondent.
20

No. C 07-3056 JW (PR)

**RESPONDENT'S REPLY TO
PETITIONER'S OPPOSITION TO
MOTION TO DISMISS**

21 Respondent moved to dismiss this petition because pro se petitioner Pena filed it after the
22 one-year statute of limitations had lapsed. First, the time between Pena's administrative decision
23 and filing his superior court petition, and the time between his California Supreme Court denial
24 and filing this federal petition totaled 543 days. In his opposition, Pena does not respond to this
25 argument. Second, Pena unreasonably delayed in filing his appellate court petition 302 days after
26 his superior court petition was denied. Pena responds that this delay was due to his inability to
27 retrieve his files from his state-appointed attorney. (Opp'n 2.) But Pena misses the point that the
28 302-day delay is above and beyond the 543-day delay that already renders his petition untimely.

1 Thus, without explaining the 543-day delay, Pena has not validly opposed Respondent's motion.
2 Accordingly, for the reasons stated herein and in Respondent's motion to dismiss, this Court
3 should grant Respondent's motion and dismiss the petition as untimely.

4 Dated: December 19, 2007

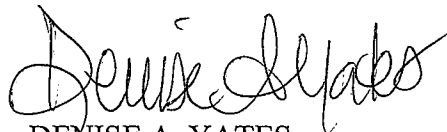
5 Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **PENA, IGNACIO v. D. K. SISTO, Warden**

No.: **C07-03056 JW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **December 20, 2007**, I served the attached

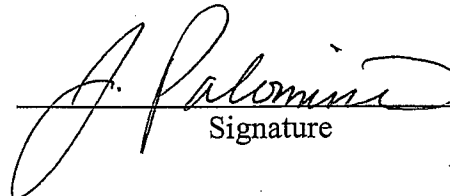
**RESPONDENT'S REPLY TO PETITIONER'S
OPPOSITION TO MOTION TO DISMISS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Ignacio Pena, D-17862
California State Prison, Solano
2100 Peabody Rd
P.O. Box 4000
Vacaville, CA 95696-4000
in pro per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 20, 2007**, at San Francisco, California.

J. Palomino
Declarant



Signature